

### DISCUSSION OF THE AMENDMENT

The status of the parent application has been updated in the specification.

Claims 54 and 60 have been amended by incorporating the subject matter of Claims 57 and 63, respectively, therein, except that *Azotobacter* has been omitted. Claims 57, 63, 69, and 82 have been cancelled. Claim 58 has been amended to depend on Claim 54; Claim 64 has been amended to depend on Claim 60.

New Claims 85 and 86, which are linking claims, have been added. Claim 85 is based, in effect, on a combination of Claims 60, 66 and 79. Step (1) of Claim 86 can be considered to be supported by the sentence bridging pages 27 and 28 of the specification.

No new matter has been added by the above amendment. Claims 53-56, 58-62, 64-68, 70-81, and 83-86 are now pending in the application. Of these claims, Claims 53 and 72-78 stand withdrawn from consideration.

### REMARKS

Applicants thank the Examiner for the courtesy extended to Applicants' attorney during the interview held November 19, 2002, in the above-identified application. During the interview, Applicants' attorney explained the presently-claimed invention and why it is patentable over the applied prior art, and discussed other issues raised in the Office action. The discussion is summarized and expanded upon below.

The rejection of Claim 54 under 35 U.S.C. § 102(a, b, e), as anticipated by U.S. 5,854,280 (Gomez et al), is respectfully traversed. Gomez et al is interested in microorganisms capable of converting sordarin to sordaricin, and discloses a number of bacterial strains, including one designated as NCIMB 40675, as having this capability (column 24, line 53 through column 25, line 44). NCIMB 40675 is disclosed as a

Coryneform species (column 24, line 63) but not apparently a member of the genus *Corynebacterium* (column 101, lines 50-54). To the extent relevant here, at Example 76, NCIMB 40675 is disclosed as containing a complex mixture of branch chain fatty acids, i.e., 12-methyltetradecanoic, 14-methylhexadecanoic, and 14-methylpentadecanoic acids (column 101, line 35ff). Gomez et al, beyond the above disclosure of these branch chain fatty acids, indicates no particular interest with regard thereto. As stated above, Gomez et al is concerned with converting sordarin to sordaricin. Thus, one skilled in the art reading Gomez et al would not be motivated to do anything with regard to these branch chain fatty acids. Moreover, the subject matter of Gomez et al is now excluded by the present claims. Accordingly, it is respectfully requested that the rejection over Gomez et al be withdrawn.

The rejection of Claims 54-71 and 79-84 under 35 U.S.C. § 112, first paragraph, is respectfully traversed. In reply, Applicant offers the following:

Applicant, through undersigned counsel, represents that the biological materials disclosed herein as having been deposited with American Type Culture Collection, which is an accepted Budapest Treaty IDA, meet the terms of 37 CFR 1.808(a)(2), i.e., that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent.

During the above-referenced interview, the Examiner indicated that the above statement would be sufficient to overcome the rejection. Accordingly, it is respectfully requested that it be withdrawn.

During the above-referenced interview, Applicant's attorney also pointed out to the Examiner that MPEP § 609 requires that the Examiner **will** consider information which has been considered by the Office in a parent application when examining, *inter alia*, a

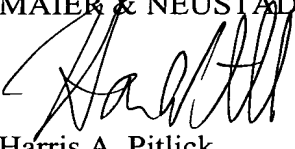
continuation-in-part application. Applicant's attorney particularly mentioned the parent application herein, i.e., U.S. 6,214,875.

Finally, Applicant notes the Examiner's statement that the claims shall be restricted to the single disclosed (and elected) species if no generic claim is held to be allowable. To the extent the Examiner's position is that Applicant is foreclosed from amending any present generic claim, that position is inconsistent with law.

All of the presently pending claims in this application are now believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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Serial No: 09/647,918

Amendment Filed on: Herewith

IN THE SPECIFICATION

Page 1, replace the first paragraph with the following:

This application is a continuation in part of U.S. Application Serial No. 09/173,681 filed October 16, 1998, now U.S. Patent No. 6, 214,875, which application claims the benefit of U.S. Provisional Application 60/081,712, filed April 14, 1998.

IN THE CLAIMS

Claims 57, 63, 69, and 82 (Canceled)

54. (Amended) A method of making a terminally methyl-branched iso- or anteiso-fatty acid, or a mixture of said fatty acids, which comprises culturing a bacteria strain containing said fatty acid(s) to form a fermentation solution containing said fatty acid(s), and then isolating said fatty acid(s), from the fermentation solution, wherein the bacteria strain is from a genus selected from the group consisting of *Stenotrophomonas*, *Xanthomonas*, *Flavobacterium*, *Capnocytophaga*, *Altermonas*, *Cytophage*, *Bacillus*, *Chryseobacterium*, *Empdobacter*, *Aurebacterium*, *Sphingobacterium*, *Staphylococcus*, and *Pseudomonas*.

58. (Amended) The method of Claim [57] 54, wherein the bacterial strain is *Stenotrophomonas maltophilia*.

60. (Amended) A method of making a fermentation solution containing at least one terminally methyl-branched iso- or anteiso-fatty acid, which comprises culturing a bacteria strain containing said fatty acid in a nutritive medium to form a fermentation solution

containing said fatty acid, wherein the bacteria strain is from a genus selected from the group consisting of *Stenotrophomonas*, *Xanthomonas*, *Flavobacterium*, *Capnocytophaga*, *Altermonas*, *Cytophaga*, *Bacillus*, *Chryseobacterium*, *Empdobacter*, *Aurebacterium*, *Sphingobacterium*, *Staphylococcus*, and *Pseudomonas*.

64. (Amended) The method of Claim [63] 60, wherein the bacterial strain is *Stenotrophomonas maltophilia*.

Claims 85 and 86 (New)